



WASHOE COUNTY

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STAFF REPORT

BOARD MEETING DATE: December 13, 2016

DATE: November 3, 2016
TO: Board of County Commissioners
FROM: Vahid Behmaram, Water Management Planner Coordinator
Community Services Dept., 954-4647, vbehmaram@washoecounty.us
THROUGH: Dave Solaro, Arch., P.E., Director
Community Services Department, 328-3600, dsolaro@washoecounty.us
SUBJECT: (1) Hearing to consider objections to a resolution declaring Washoe County's intent to sell Truckee River Water Rights (362 acre-feet) Claim DTR -014 to the Pyramid Lake Paiute Tribe.
(2) Possible action to
(a) approve the Agreement for Purchase and Sale of Truckee River Water Rights Claim DTR -014 between Washoe County and Great Basin Land and Water on behalf of the Pyramid Lake Paiute Tribe, [at the appraised value of \$2,896,000.00]; and, if approved,
(b) authorize the chair to execute the associated water rights deed prior to the closing of escrow. (Commission District 4.)

SUMMARY

The Board of County Commissioners (Board) must hear and deliberate on any objections to a resolution declaring Washoe County's intent to sell Truckee River Water Rights (362 acre-feet) Claim DTR -014 to the Pyramid Lake Paiute Tribe (PLPT). Staff recommends sale of these water rights for their appraised value to the PLPT for enhancement of water quality in the lower Truckee River and the enhancement of the quality of life in Washoe County and Northern Nevada.

The Agreement for Purchase and Sale of Truckee River Water Rights Claim DTR-014 is for the sale of 362 acre-feet of Truckee River water rights. Washoe County would be the seller. The purchaser, on the Pyramid Lake Paiute Tribe's behalf, would be Great Basin Land and Water (GBL&W). The purchase price is \$8,000.00 per acre-foot due to the fully consumptive nature of these water rights. The associated water rights deed will convey title of the subject water rights directly to the PLPT as the Grantee.

If the agreement is approved, an escrow account will be established at the office of Tigor Title of Nevada, Inc. in Carson City. Washoe County will then deposit the executed water rights deed into escrow and GBL&W will deposit one half of the purchase price into escrow and the escrow will close. The remaining 50% balance of the purchase price will be paid to Washoe County upon permitting of the change application by the Nevada State Engineer's office. The final permitting is anticipated to be within six months of the closing of escrow.

AGENDA ITEM # 16

Strategic Objective supported by this item: Stewardship of our community.

PREVIOUS ACTION

On November 29, 2016, the Board adopted a Resolution declaring Washoe County's intent to sell Truckee River Water Rights (362 acre-feet) Claim DTR-014 to the Pyramid Lake Paiute Tribe; and set a public hearing for December 13, 2016 at 10:00 a.m. pursuant to NRS 277.050 to hear any objections.

On September 13, 2016, the Board declared certain real property as surplus to the needs of Washoe County including the Claim DTR-014 water rights, and directed staff to sell the water rights in one block.

On April 14, 1992, the Board approved the sale of a portion of these water rights with the proceeds to be allocated for Phase one water system improvements between Wadsworth and Stampmill Estates. However, neither the sale nor the water system project was ever completed.

BACKGROUND

The Claim DTR-014 water rights were deeded to Washoe County by Lower Truckee Power & Manufacturing Company on November 30, 1926 (Doc # 40169, Book 70, Page 586, recorded on June 8, 1927). Washoe County has been the recognized owner of these water rights by both the Federal Water Master and the Nevada State Engineer. Between 1926 and 1992 Washoe County utilized these water rights and resources to deliver irrigation water to the residents of Wadsworth. In 1992 the delivery of Truckee River water ceased to continue due to multiple failures of the old infrastructure and pipeline. A ground water well drilled under permit # 53153 replaced the river water system and continues to operate to this day.

In 1992 the Board approved projects to integrate the County operated Stampmill Estates water system to the Wadsworth water system to provide potable domestic water service within Wadsworth. However, the necessary easements were not granted and the integration project never completed. The irrigation project did not transfer to the Truckee Meadows Water Authority in December of 2014 with the rest of the County water systems, as it is not a potable water system.

An appraisal of these water rights performed by Mr. Robert Schiffmacher dated September 21, 2016 values the water rights at \$8,000.00 per acre foot as long as the State Engineer affirms that these water rights are fully consumptive and do not require a return flow reduction. Staff has discussed this with the State Engineer and does not see any reason why the State Engineer would find these water rights to be less than fully consumptive. From the appraisal report:

"It is assumed based on the information available at the time this appraisal was completed that the original claim DTR-014 is unusual in that the original decreed use was a municipal water supply and was expected to be fully consumed. The State Engineer and the Federal Water Master have indicated that if an application were filed on this water for a change in point of diversion and a change in use to a municipal and domestic use in the Tahoe Reno Industrial Center or other fully consumptive use including "Wildlife

purposes, including instream flows for fish (cui-ui & Lahontan cutthroat trout)” he does not believe that the permit would be subject to the “consumptive use reduction (haircut)”.

The attached purchase and sale agreement contemplates that if the State Engineer rules that these water rights are not fully consumptive, the amount not transferred for instream flows would reduce the purchase price by \$8,000.00 per each acre foot not transferred. The average consumptive use adjustment for water used for instream flows for wildlife has been around 35%. This means that there is a potential reduction of \$1,013,600.00 to the overall price if these are not ruled as fully consumptive.

FISCAL IMPACT

In accordance with NRS 277.050, the proceeds from the sale of these water rights must be used for Capital Outlay. Additionally, it is county policy to utilize one-time funds such as this for one-time purposes such as capital projects. Therefore, the proceeds of this sale (\$2,896,000) will be appropriated in the Capital Improvement Fund for capital projects during the FY18 budget process.

RECOMMENDATION

It is recommended that the Board of County Commissioners conduct a hearing to consider objections to a resolution declaring Washoe County’s intent to sell Truckee River Water Rights (362 acre-feet) Claim DTR -014 to the Pyramid Lake Paiute Tribe and approve the Agreement for Purchase and Sale of Truckee River Water Rights Claim DTR -014 between Washoe County and Great Basin Land and Water on behalf of the Pyramid Lake Paiute Tribe, [at the appraised value of \$2,896,000.00]; and if approved authorize the chair to execute the associated water rights deed prior to the closing of escrow.

POSSIBLE MOTION

After the hearing, should the Board wish to implement the staff recommendation, a possible motion would be: “Move to approve (a) the Agreement for Purchase and Sale of Truckee River Water Rights Claim DTR -014 between Washoe County and Great Basin Land and Water on behalf of the Pyramid Lake Paiute Tribe, [at the appraised value of \$2,896,000.00]; and, if approved, (b) authorize the chair to execute the associated water rights deed prior to the closing of escrow.”



October 26, 2016
Via Federal Express

David M. Solaro, Director
Community Services Department
Washoe County
P.O. Box 11130
Reno, NV 89520-0027

RE: Proposed Agreement for Purchase and Sale of Truckee River Water Rights from
Claim No. 14

Dear Mr. Solaro:

We are pleased to enclose two copies of a proposed agreement to purchase, on behalf of the Pyramid Lake Paiute Tribe ("Tribe"), Washoe County's 362.00 acre-feet of Truckee River water rights appropriated under Claim No. 14. I have signed these copies on behalf of Great Basin Land & Water.

As we have discussed, and as set forth in the proposed agreement in Recitals B and C and in the attached Water Rights Deed, the water rights would be conveyed directly from Washoe County to the Tribe to augment instream flows in the Truckee River for wildlife purposes. Funds for this acquisition would be provided from Great Basin Land & Water's Desert Terminal Lakes Assistance Grant Agreement with the Bureau of Reclamation.

We appreciate Washoe County's consideration of our proposed agreement and look forward to working with the County to accomplish this acquisition to further our shared goals of benefiting the water quality of the Truckee River and improving the recreational opportunities and quality of life in Washoe County and Northern Nevada.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Peskin".

Aaron Peskin
President

cc: Vahid Behmaram *Via Email: VBehmaram@washoecounty.us*
Rob Scanland *Via Email: rob@greatbasinlandandwater.org*



**AGREEMENT FOR
PURCHASE AND SALE OF TRUCKEE RIVER WATER RIGHTS
CLAIM DTR-014**

THIS AGREEMENT ("Agreement") is entered into this ___ day of _____, 2016, by and between the COUNTY OF WASHOE, a political subdivision of the State of Nevada ("Seller") and GREAT BASIN LAND & WATER, a Nevada nonprofit corporation ("Buyer"), jointly referred to herein as the Parties.

RECITALS

A. Seller is the owner of that certain Three Hundred Sixty-Two (362.00) acre-feet per annum (AFA), equivalent to 0.5 cfs, of decreed vested water rights in and to the waters of the Truckee River and its tributaries, situate in the County of Washoe, State of Nevada, being a portion of the water and water rights, ditch and ditch rights, appropriated under Claim No. 14, delivered by the WADSWORTH POWER DITCH, heretofore allocated to the WADSWORTH LIGHT AND POWER COMPANY, in that certain action entitled The United States of America, Plaintiff, vs. Orr Water Ditch Company, et al., Defendants, the same in Equity Docket No. A-3 in the District Court of the United States in and for the District of Nevada (the "Water Rights").

B. Seller desires to sell the Water Rights to Buyer, and Buyer desires to purchase the Water Rights from Seller, which Water Rights shall be conveyed directly to the Pyramid Lake Paiute Tribe (the "Pyramid Tribe") to augment instream flows in the Truckee River from their point of diversion to Pyramid Lake for wildlife purposes, including instream flows for fish.

C. Funds for Buyer's purchase of the Water Rights are available from Desert Terminal Lakes Assistance Grant Agreements with the United States of America, acting through the Department of the Interior, Bureau of Reclamation, which provides for the acquisition of Truckee River water rights to be owned and managed by the Pyramid Tribe from

their point of diversion to Pyramid Lake for wildlife purposes, including instream flows for fish (the “DTL Grant Funds”).

D. The dedication of the Water Rights to instream flow will enhance water quality in the Truckee River benefiting the environment, improving water quality and enhancing the quality of life in Washoe County and Northern Nevada.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller and Buyer agree as follows:

TERMS AND CONDITIONS

1. **Purchase and Sale.** For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell the Water Rights to Buyer, and Buyer agrees to purchase the Water Rights from Seller on the terms and conditions set forth in this Agreement.

2. **Purchase Terms.**

A. **Purchase Price.** The purchase price for the Water Rights shall be EIGHT THOUSAND DOLLARS (\$8,000.00) per acre foot for a total of TWO MILLION EIGHT HUNDRED NINETY-SIX THOUSAND DOLLARS (\$2,896,000.00) representing the market value of the Water Rights assuming that the entire 362.00 acre feet can be transferred to instream flows in the Truckee River (“Purchase Price”).

B. **Method of Payment.** The Purchase Price shall be paid to Seller in cash as follows: (1) one-half at closing, and (2) the remaining balance upon approval by the State Engineer of the Change Application (as defined in Section 5 below).

3. **Effective Date.** This Agreement will be in effect as of the date this Agreement is fully signed by the Parties hereto (the “Agreement Date”).

4. **Escrow and Closing.**

A. **Escrow.** Escrow shall be held at the office of Ticor Title of Nevada, Inc. located at 307 W Winnie Lane, Suite 1, Carson City, NV 89703-4103 (the “**Escrow Holder**”). The provisions of this Agreement shall constitute joint instructions to the Escrow Holder; provided, however, that Seller and Buyer shall mutually execute such additional instructions as may be reasonable and necessary to carry out the provisions of this Agreement.

B. **Conditions Precedent to Closing.** Closing shall be conditioned upon the following conditions precedent:

(1) Buyer’s Board of Directors shall have approved this transaction as evidenced by Buyer’s written notice thereof to Seller given in accordance with the provisions of Section 9.

(2) Seller’s governing body shall have approved this transaction as evidenced by Seller’s written notice thereof to Buyer given in accordance with the provisions of Section 9.

C. **Closing Date.** Closing shall occur on or before the first business day which is thirty (30) days following the approvals set forth as conditions precedent in Section 4.B above (the “**Closing Date**”); provided that the Closing Date shall in no event be later than January 31, 2017, unless the Parties extend the Closing Date by written agreement. If escrow fails to close by January 31, 2017, or by an extended Closing Date, this Agreement shall terminate and the documents and funds deposited into escrow, if any, shall be returned to the depositing party, in which case the Parties shall have no further obligations under this Agreement.

D. **Deliveries into Escrow.** Following the satisfaction of the above conditions precedent, the Parties shall deliver the following documents and funds into escrow

on or before the Closing Date:

(1) **Water Rights Deed.** Buyer shall prepare and provide to Seller for execution and delivery into escrow a water rights deed in the form and substance of **Exhibit A** attached hereto, conveying the Water Rights directly to the Pyramid Tribe and its successors and assigns, free and clear of all liens, encumbrances and exceptions (the “**Water Rights Deed**”). The Water Rights Deed shall also be executed by and on behalf of the Pyramid Tribe.

(2) **Funds.** From the DTL Grant Funds, Buyer shall deposit one-half of the Purchase Price into escrow. The balance of the Purchase Price shall be due and payable pursuant to Section 6, below. If for any reason and through no fault of Buyer, BOR is unable to make the DTL Grant Funds available to Buyer in a timely manner on or before the Closing Date, the Parties agree to extend the Closing Date pursuant Section 4.C, above, pending receipt of the funds.

E. **Closing Costs and Fees.** Seller and Buyer shall split the cost of the escrow fees. Buyer shall pay the cost to record the Water Rights Deed. Seller shall be responsible for the transfer tax, if any. Buyer shall pay for the State Engineer Fees pursuant to Section 5 below. Buyer and Seller shall each pay its own fees and costs for any special services such as wire transfer fees, overnight mail, certified copies and document preparation. Any other fees or costs shall be allocated between the Buyer and Seller in accordance with the customary practice of Washoe County, Nevada.

5. **Reports of Conveyance and Change Application.**

A. Buyer shall prepare and file, on behalf of the Pyramid Tribe, a Report of Conveyance and Application to Change the Point of Diversion, Place of Use and Manner of Use of the Water Rights to augment instream flows in the Truckee River from their point of diversion to Pyramid Lake for wildlife purposes, including instream flows for fish (“**Change**

Application”) with the Nevada Division of Water Resources (“NDWR”) within ten (10) business days of closing.

B. Seller agrees to provide information to NDWR as necessary or as may be requested by NDWR, Buyer or the Pyramid Tribe to further the approval of the Change Application.

C. Buyer shall pay for the State Engineer fees to process the Report of Conveyance and Change Application (“**State Engineer Fees**”) of the Water Rights.

D. If for any reason the State Engineer determines that less than the entire 362.00 acre feet can be transferred to instream flows in the Truckee River, Seller and Buyer agree that the balance of the Purchase Price shall be reduced by the amount of EIGHT THOUSAND DOLLARS (\$8,000.00) for each acre foot not transferred.

E. If for any reason the State Engineer denies the Change Application, Buyer shall cause the Water Rights to be re-conveyed to Seller, Seller shall return to Buyer the amount of the Purchase Price received by Seller, and the Parties shall have no further obligations under this Agreement.

6. **The Balance of the Purchase Price.** Within ten (10) business days of the date of approval by the State Engineer of the Change Application for the Water Rights, Buyer shall pay the balance of the Purchase Price to Seller; provided, however, that Buyer shall not be in default if for any reason and through no fault of Buyer, BOR fails to make DTL Grant Funds available to Buyer in a timely manner.

7. **Seller's Representations and Warranties.** Seller represents that Seller has a good faith belief that the following facts and circumstances are true to the best of Seller’s knowledge with the intent that these representations shall survive the close of escrow, but shall expire upon certification by the Nevada State Engineer of the Change Application.

A. Seller has full power and authority to enter into this Agreement and to sell, transfer and convey all right, title and interest in and to the Water Rights in accordance with this Agreement.

B. Seller is the legal owner of the Water Rights with full right, title and interest therein, and the ability and authority to convey the same directly to the Pyramid Tribe.

C. There are no banking agreements, will serve letters, or dedications encumbering the Water Rights, and the Water Rights have not been previously transferred, sold or otherwise assigned by Seller, and there are no interests of third parties, or claims by third parties to an interest, in the Water Rights.

D. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right, and actual authority to bind Seller to the terms and conditions of those documents.

E. The existence as of the Closing Date of any fact with respect to the Water Rights, which, in Buyer's reasonable discretion, is inconsistent with any of the representations and warranties set forth in A through D, above, shall constitute the failure of a condition precedent to Buyer's obligations under this Agreement as to the purchase of the Water Rights.

8. **Agreement Term.** This Agreement will be in effect as of the Agreement Date and, unless terminated pursuant to the provisions of Section 4.C of this Agreement, shall remain in effect until the Change Application has been approved and Buyer has paid the balance of the Purchase Price to Seller pursuant to Section 6 ("**Agreement Term**"). The foregoing notwithstanding, if the State Engineer fails to act on the Change Application within six (6) months of the Closing Date, the Parties shall extend the Agreement Term for additional one-month periods until the Change Application is approved.

9. **Notices.** Any notices or other communication required or permitted under this

Agreement shall be in writing, and shall be (a) personally delivered, (b) sent by certified or registered United States mail, postage prepaid, to the address of the party set forth below, (c) sent by email or facsimile to the email address or fax number of the party set forth below, provided that the executed original thereof is deposited in the mail on the same date as the email or facsimile, or (d) sent by overnight common carrier courier service to the address of the party set forth below. Such notice or communication shall be deemed given when delivered in person, when the email or telecopy is received, in the case of mailed notice it shall be deemed given forty-eight (48) hours following deposit in the United States mail, or, in the case of overnight service, on the business day immediately following the date it was deposited. Notice of change of address shall be given by written notice in the manner detailed in this Section. Such notices shall be addressed as follows:

GBLW:

Great Basin Land & Water
470 Columbus Ave., Suite 211
San Francisco, CA 94133
Attn: Aaron Peskin, President
Telephone: (415) 986-7070
Facsimile: (415) 296-9533
Email: landh2o@mindspring.com

WASHOE COUNTY:

Washoe County Community Services Department
Attn: David M. Solaro, Director
1001 E. 9th Street
P.O. Box 11130
Reno, NV 89520-0027
Telephone: (775) 328-3600
Facsimile: (775) 328-3699
Email: dsolaro@washoecounty.us

10. **No Broker's Commission.** Each party represents to the other that it has not contracted with any broker or finder with regard to this transaction, and each agrees to indemnify and defend the other and hold the other harmless from and against all liability,

claims, demands, damages and costs of any kind arising from or connected with any broker's or finder's type of fee, commission or charges claimed to be due any person arising from such party's conduct with respect to this transaction.

11. **Binding on Successors.** This Agreement shall be binding not only upon the Parties but also upon their heirs, executors, administrators, personal representatives, assigns, and all other successors in interest.

12. **Good Faith and Fair Dealing.** The Parties shall implement the provisions of this Agreement in good faith and shall observe all standards of fair dealing with respect thereto.

13. **Remedies Upon Default.** If Seller defaults in the performance of any of Seller's obligations under this Agreement, Buyer will, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance against Seller.

14. **Miscellaneous.** This Agreement represents the entire agreement of the Parties and may not be amended except by a writing signed by each party hereto. The obligations, covenants, indemnifications, representations, warranties and remedies set forth in this Agreement shall not merge with transfer of title but shall remain in effect. Each party shall execute and deliver or cause to be executed and delivered all instruments reasonably required to convey the Water Rights directly to the Pyramid Tribe, and to vest in each party all rights, interest and benefits intended to be conferred by this Agreement. In the event of a dispute the prevailing party shall be entitled to payment of its reasonable attorneys fees and costs in negotiating, resolving, arbitrating or litigating the dispute. Seller acknowledges that GBLW is entering into this Agreement in its own right and not as an agent of any governmental agency or entity.

15. **Time of Essence.** Time shall be of the essence with respect to the performance of the Parties' obligations under this Agreement.

16. **Interpretation.** The Parties agree that they were equally influential in preparing and negotiating this Agreement, and each had the opportunity to seek the advice of legal counsel prior to the execution of this Agreement. Therefore, the Parties agree that no presumption should arise construing this Agreement more unfavorably against any one party.

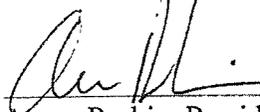
17. **Significance of Recitals.** The Recitals to this Agreement are integral and operative provisions of this Agreement and are incorporated in and made a part of this Agreement.

18. **Headings.** The headings of the sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

19. **Counterparts.** This Agreement may be executed in counterparts and is binding when all counterpart signatures have been assembled and attached to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement below.

GREAT BASIN LAND AND WATER

By: 
Aaron Peskin, President

Date: 10/26/16

WASHOE COUNTY

By: _____
Kitty K. Jung, Chair
Board of County Commissioners

Date: _____

Attest: _____
Washoe County Clerk

Date: _____

Approved as to Form:

By: _____
District Attorney

EXHIBIT A
FORM OF DEED

NO APN

RECORDING REQUESTED BY:
Western Title Company
Escrow No. _____

WHEN RECORDED MAIL TO:
Pyramid Lake Paiute Tribe
P.O. Box 256
Nixon, NV 89424
Attn: Chairman, Tribal Council

WATER RIGHTS DEED

THIS INDENTURE, made and entered into this ___ day of _____, 201_, by and between COUNTY OF WASHOE, a political subdivision of the State of Nevada (hereinafter referred to as "Grantor") and the PYRAMID LAKE PAIUTE TRIBE, a federally recognized Indian Tribe (hereinafter referred to as "Grantee").

WITNESSETH:

That said Grantor, in consideration of the sum of Ten Dollars (\$10.00) lawful money of the United States of America, and other good and valuable consideration, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the Grantee, and to its successors and assigns forever, all right, title and interest of Grantor in and to that certain **Three Hundred Sixty-Two (362.00) acre-feet** per annum (AFA), equivalent to 0.5 cfs, of decreed vested water rights in and to the waters of the Truckee River and its tributaries, situate in the County of Washoe, State of Nevada, being a portion of the water and water rights, ditch and ditch rights, appropriated under **Claim No. 14**, delivered by the WADSWORTH POWER DITCH, heretofore allocated to the WADSWORTH LIGHT AND POWER COMPANY, in that certain action entitled The United States of America, Plaintiff, vs. Orr Water Ditch Company, et al., Defendants, the same in Equity Docket No. A-3 in the District Court of the United States in and for the District of Nevada ("Orr Ditch Decree").

Said rights authorizing delivery of a prorata share of the diversion rate not to exceed **362.00 acre feet** per annum, more or less, together with the right to change the point of diversion, place of use and manner of use thereof.

To have and to hold the said water and water rights, ditch and ditch rights, together with the tenements, hereditaments and appurtenances thereunto belonging or appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof unto the Grantee, its successors and assigns, forever.

Grantee does hereby assume the payment of all water master fees and charges that may hereafter become due and payable in respect to said rights referred to herein by reason of the Orr Ditch Decree.

IN WITNESS WHEREOF, the parties hereto have caused this Water Rights Deed to be executed as of the day and year first above written.

GRANTOR:

WASHOE COUNTY

By: _____
Kitty K. Jung, Chair
Board of County Commissioners

Date: _____

Attest: _____
Washoe County Clerk

Date: _____

Approved as to Form:

By: _____
District Attorney

GRANTEE:

PYRAMID LAKE PAIUTE TRIBE

By: _____
Vinton Hawley, Chairman

STATE OF NEVADA _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 201_, personally appeared before me, a Notary Public, _____, who acknowledged to me that she executed the within instrument freely and voluntarily and for the uses and purposes therein stated.

NOTARY PUBLIC

My commission expires: _____

STATE OF NEVADA _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 201_, personally appeared before me, a Notary Public, _____, who acknowledged to me that she executed the within instrument freely and voluntarily and for the uses and purposes therein stated.

NOTARY PUBLIC

My commission expires: _____